MDL 1760

RELEASED FOR PUBLICATION

DOCKET NO. 1760

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE AREDIA AND ZOMETA PRODUCTS LIABILITY LITIGATION

BEFORE WM. TERRELL HODGES, CHAIRMAN, JOHN F. KEENAN, D. LOWELL JENSEN, J. FREDERICK MOTZ,* ROBERT L. MILLER, JR., KATHRYN H. VRATIL AND DAVID R. HANSEN,* JUDGES OF THE PANEL*

TRANSFER ORDER

This litigation currently consists of fifteen actions pending in the Eastern District of New York, fifteen actions in the Southern District of New York, four actions in the Middle District of Tennessee and one action in the Western District of Oklahoma, as listed on the attached Schedules A and B.[1] Before the Panel is a motion, pursuant to 28 U.S.C. § 1407, brought by plaintiff in one Eastern District of New York action for coordinated or consolidated pretrial proceedings of all actions in the Eastern District of New York or the Southern District of New York. Moving plaintiff avers that plaintiffs in the other actions and potential tag-along actions in those two districts support the motion. Plaintiffs in at least four additional potential tag-along actions pending, respectively, in four districts[2] also support the motion. All defendants – Novartis Pharmaceuticals Corp. (Novartis), Merck & Co., Inc. (Merck), Procter & Gamble Pharmaceuticals, Inc. (P&G), and sanofi-aventis U.S. LLC (Aventis) – oppose the motion. Plaintiffs in the four Middle District of Tennessee actions and a Northern District of Florida potential tag-along action also oppose the motion. In the event the Panel orders centralization over their objections, these plaintiffs and defendant Novartis would support centralization in the Middle District of Tennessee.

On the basis of the papers filed and hearing session held, the Panel finds that the actions in this litigation listed on Schedule A involve common questions of fact, and that their centralization under Section 1407 in the Middle District of Tennessee will serve the convenience of the parties and witnesses

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* Judges Hodges, Motz and Hansen took no part in the decision of this matter.

[1] The Panel has been notified of 35 related actions pending in multiple federal districts. In light of the Panel's disposition of this docket, 34 of these actions will be treated as potential tag-along actions. *See* Rules 7.4 and 7.5, R.P.J.P.M.L., 199 F.R.D. 425, 435-36 (2001).

[2] Middle District of Florida, Middle District of North Carolina, Northern District of Ohio, and Western District of Texas.

and promote the just and efficient conduct of this litigation. The Schedule A actions assert claims against Novartis arising from ingestion of Aredia and/or Zometa, prescription medications used in the treatment of cancer. Specifically, these actions present complex common factual questions concerning, among other things, 1) the development, testing, manufacturing and marketing of the two Novartis drugs, and 2) Novartis's knowledge concerning their alleged adverse effects, in particular, the potential for each drug to cause osteonecrosis of the jaw. Centralization under Section 1407 is necessary in order to eliminate duplicative discovery; prevent inconsistent pretrial rulings; and conserve the resources of the parties, their counsel and the judiciary.

The Panel further finds that centralization of the actions listed on Schedule B would neither serve the convenience of the parties and witnesses nor further the just and efficient conduct of this litigation at this time. Four of these actions are brought solely against Merck and concern its drug Fosamsax. The fifth action, which involves the drug Actonel, is brought against P&G and Aventis. Both Actonel and Fosamax, so-called oral bisphosphonates, are used in the prevention or treatment of osteoporosis and are available without prescription. Movants have failed to persuade us that any common questions of fact between the actions against Novartis and the actions against the other defendants are sufficiently numerous to justify Section 1407 transfer of the latter group. Alternatives to transfer exist that can minimize whatever possibilities there might be of duplicative discovery and/or inconsistent pretrial rulings. *See, e.g., In re Eli Lilly and Company (Cephalexin Monohydrate) Patent Litigation*, 446 F.Supp. 242, 244 (J.P.M.L. 1978); *see also Manual for Complex Litigation, Fourth* § 20.14 (2004). For the same reasons, the Panel is persuaded that claims against Merck in three Schedule A actions[3] do not share sufficient questions of fact with the claims against Novartis in those actions to warrant inclusion in the MDL-1760 proceedings.

We conclude that the Middle District of Tennessee is an appropriate transferee forum for this litigation. The Middle District of Tennessee has 1) pending actions, including putative nationwide class actions, in which pretrial matters have been proceeding; and 2) the endorsement of some plaintiffs and the common defendant, in the alternative. Furthermore, centralization in this forum permits the Panel to effect the Section 1407 assignment to a suggested transferee district that is currently handling few other multidistrict litigation dockets.

IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 1407, the actions listed on Schedule A and pending outside the Middle District of Tennessee are transferred to the Middle District of Tennessee and, with the consent of that court, assigned to the Honorable Todd J. Campbell for coordinated or consolidated pretrial proceedings with the actions listed on Schedule A and pending in that district.

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[3] *Shirley Grizzle v. Novartis Pharmaceuticals Corp., et al.*, S.D. New York, C.A. No. 1:06-366; *Burdette Burt v. Novartis Pharmaceuticals Corp., et al.*, S.D. New York, C.A. No. 1:06-368; and *Jack Cuthbert v. Novartis Pharmaceuticals Corp., et al.*, S.D. New York, C.A. No. 1:06-387.

IT IS FURTHER ORDERED that claims against Merck in the three Southern District of New York actions listed in footnote 3 are simultaneously separated and remanded to the Southern District of New York.

IT IS FURTHER ORDERED that, pursuant to 28 U.S.C. § 1407, transfer is denied with respect to the actions listed on Schedule B.

IT IS FURTHER ORDERED that this docket, originally named MDL-1760 – *In re Bisphosphonate Drugs Products Liability Litigation*, is renamed as follows: MDL-1760 – *In re Aredia and Zometa Products Liability Litigation.*

FOR THE PANEL:

John F. Keenan
Acting Chairman

SCHEDULE A

MDL-1760 – In re Aredia and Zometa Products Liability Litigation

Eastern District of New York

Zena Biocca v. Novartis Pharmaceuticals Corp., C.A. No. 1:06-170
Linda H. Johnson v. Novartis Pharmaceuticals Corp., C.A. No. 1:06-176
Mindy J. Knopf v. Novartis Pharmaceuticals Corp., C.A. No. 1:06-188
John Bartoli v. Novartis Pharmaceuticals Corp., C.A. No. 1:06-189
Margaret Cartelli v. Novartis Pharmaceuticals Corp., C.A. No. 1:06-191
Elaine Guilbeau v. Novartis Pharmaceuticals Corp., C.A. No. 1:06-192
Michel Hendrix v. Novartis Pharmaceuticals Corp., C.A. No. 1:06-194
Glenn Hiller v. Novartis Pharmaceuticals Corp., C.A. No. 1:06-195
Victor Kalily v. Novartis Pharmaceuticals Corp., C.A. No. 1:06-196
K. Thomas Punnose v. Novartis Pharmaceuticals Corp., C.A. No. 1:06-199
Loretta Gee v. Novartis Pharmaceuticals Corp., C.A. No. 1:06-257
Runette Champion v. Novartis Pharmaceuticals Corp., C.A. No. 1:06-258
Mayra Martinez v. Novartis Pharmaceuticals Corp., C.A. No. 1:06-259
Karlene Hogan, etc. v. Novartis Pharmaceuticals Corp., C.A. No. 1:06-260
Arlene Perkins v. Novartis Pharmaceuticals Corp., C.A. No. 1:06-261

Southern District of New York

Helen E. Shrum v. Novartis Pharmaceuticals Corp., C.A. No. 1:06-363
Nancy Radin v. Novartis Pharmaceuticals Corp., C.A. No. 1:06-364
Shirley Grizzle v. Novartis Pharmaceuticals Corp., et al., C.A. No. 1:06-366
Patsy Carter v. Novartis Pharmaceuticals Corp., C.A. No. 1:06-367
Burdette Burt v. Novartis Pharmaceuticals Corp., et al., C.A. No. 1:06-368
Jacqueline Wilson v. Novartis Pharmaceuticals Corp., C.A. No. 1:06-369
Gary Fry v. Novartis Pharmaceuticals Corp., C.A. No. 1:06-370
Linda Wallace v. Novartis Pharmaceuticals Corp., C.A. No. 1:06-371
Charles Ulatowski v. Novartis Pharmaceuticals Corp., C.A. No. 1:06-373
Gary Stevens v. Novartis Pharmaceuticals Corp., C.A. No. 1:06-374
Jack Cuthbert v. Novartis Pharmaceuticals Corp., et al., C.A. No. 1:06-387

Western District of Oklahoma

Linda Ingram, etc. v. Novartis Pharmaceuticals Corp., C.A. No. 5:05-913

Middle District of Tennessee

Angela Wood, et al. v. Novartis Pharmaceuticals Corp., C.A. No. 3:05-716
Terry Anderson, et al. v. Novartis Pharmaceuticals Corp., C.A. No. 3:05-718
Susan Becker, et al. v. Novartis Pharmaceuticals Corp., C.A. No. 3:05-719

SCHEDULE B

MDL-1760 – In re Aredia and Zometa Products Liability Litigation

Southern District of New York

Margaret Peggy Harth v. Merck & Co., Inc., C.A. No. 1:06-361
Ramon L. Harrison v. Merck & Co., Inc., C.A. No. 1:06-365
Suzanne Dengel v. Merck & Co., Inc., C.A. No. 1:06-372
Lena Simmons v. Proctor & Gamble Pharmaceuticals, Inc., et al., C.A. No. 1:06-454

Middle District of Tennessee

Gwendolyn Wolfe, et al. v. Merck & Co., Inc., C.A. No. 3:05-717